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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE GENERAL MILLS, INC. KIX
CEREAL LITIGATION

Case No. 2:12-cv-00249-KM-JBC

**DECLARATION OF HENRY J. KELSTON IN SUPPORT OF
PLAINTIFFS' OPPOSITIONS TO DEFENDANT GENERAL MILLS,
INC.'S MOTIONS TO STRIKE AND IN SUPPORT OF PLAINTIFFS'
MOTION TO SEAL**

I, Henry J. Kelston, hereby declare as follows:

1. I am a partner with Milberg LLP, interim co-lead counsel for Plaintiffs in the above-captioned matter. I make this Declaration in support of Plaintiffs' Opposition to Defendant General Mills Inc.'s Motion to Strike Portions of the Declaration of Henry Kelston and Motion to Strike the Declaration of Elizabeth Howlett. I have personal knowledge of each of the facts set forth in this Declaration, and if called upon, I could and would competently testify thereto.

2. Attached as Exhibit A is a true and correct copy of native Excel files produced by General Mills bates numbered GMI_KIX00099247-GMI_KIX00111609.

3. Exhibit A contains proprietary sales and pricing data produced by General Mills from The Nielsen Company (US) LLC that has been designated as "Highly Confidential" pursuant to the operative Discovery Confidentiality Order, dated July 2, 2012 (Dkt. 40).

4. On October 29, 2015, General Mills informed Plaintiffs that it would not oppose Plaintiffs' motion to seal Exhibit A.

5. Attached as Exhibit B is a true and correct copy of excerpts from the deposition of Elizabeth Howlett, dated September 30, 2015.

6. Attached as Exhibit C is a true and correct copy of General Mills' Objections and Responses to Plaintiffs' First Request for Production of Documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of October, 2015, in New York, New York.


Henry J. Kelston

EXHIBIT A

FILED UNDER SEAL

EXHIBIT B

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEW JERSEY
4 Case No. 2:12-cv-249-KM-JBC

-----X

5
6 IN RE GENERAL MILLS INC.
7 KIX CEREAL LITIGATION

8 -----X

9
10 September 30, 2015

11 9:53 a.m.
12
13

14 Videotaped Deposition of ELIZABETH
15 HOWLETT, Ph.D., held at the offices of
16 Perkins Coie, 30 Rockefeller Plaza,
17 New York, New York, pursuant to Notice,
18 before Wendy D. Boskind, a Registered
19 Professional Reporter and Notary Public
20 of the State of New York.
21
22
23
24
25

1 Howlett, Ph.D.

2 how did you come to learn about that
3 study?

4 A. That was provided to me by
5 counsel.

6 Q. I want to make sure I
7 understand your prior testimony, that,
8 for purposes of your work in the Kix
9 litigation, you had a pre-existing
10 knowledge of the Consumer Reports study;
11 is that right?

12 A. Yes.

13 Q. The Hartman studies you found
14 through internet-searching?

15 A. Right, and I did have prior
16 knowledge of the Hartman studies, as
17 well.

18 Q. Okay. Did you do anything
19 else, beyond internet-searching, in order
20 to identify studies that might either
21 contradict or confirm the results of the
22 Ostberg Survey?

23 A. Yes.

24 Q. What did you do?

25 A. I went through our library

1 Howlett, Ph.D.

2 sources, we have different subscriptions
3 to different types of market research --

4 Q. Mm-hmm.

5 A. -- and I looked specifically
6 for information on -- in the food
7 category, and did not find any sources of
8 information through my library sources.

9 Q. Can you recall the name of
10 the particular databases that were
11 searched for this market research?

12 A. Mintel, I was looking for the
13 food -- if Mintel had done a food report
14 on natural and whether it discussed the
15 issue at hand, which was the
16 understanding of genetically and
17 modification, genetic modification within
18 the context of food, and I didn't find
19 any Mintel reports on that. And then I
20 also looked through some of the Nielsen
21 information that I had, and none was
22 available.

23 Q. The internet-searching that
24 you did independently -- because I had
25 understood you to have done some

1 Howlett, Ph.D.

2 independent --

3 A. Yes.

4 Q. -- internet researching; is
5 that correct?

6 A. Yes.

7 Q. How did go about doing that?

8 Were you looking on a --
9 well, how did you go about doing that?

10 A. Just a typical search.

11 I did it, actually, through
12 several ways. One thing, I searched
13 under Google Scholar. First of all, it
14 tends to focus more on the academic
15 literature. Then I did a broader search
16 on the entire web document. And then I
17 went into some of the subscription
18 services that the university has, which
19 is ABI Inform, which is the -- it's a
20 service that presents journals, and so
21 forth, that it's a subscription, so I
22 searched under Proquest and ABI Inform
23 for market research reports.

24 Q. And what were the search
25 terms that you used in order to identify

1 Howlett, Ph.D.

2 potentially-- well, I'll use a lawyer
3 term -- potentially-relevant information.

4 A. Well, I used a number of
5 them: "natural with", and then I used
6 "natural", and I did it with a "and
7 consumer", and I did "all natural", and I
8 did "100 percent natural". I did
9 "genetic", "GMO", "genetically-modified"
10 and "natural". And I did -- so I did a
11 variety of combinations of search terms.

12 Q. Limiting the work -- limiting
13 your answer to the work that you did in
14 connection with this litigation, how many
15 hours would you say you spent searching
16 for relevant market research or other
17 information in the course of preparing
18 your report?

19 A. I don't -- I don't recall,
20 off the top of my head.

21 Q. Do you have an estimate?

22 A. Probably a half a day.

23 Q. Were there reports or studies
24 that you identified in the course of this
25 research but then concluded were not

1 Howlett, Ph.D.

2 sufficiently related to your inquiry and

3 didn't use for that reason?

4 A. No.

5 Q. Is it fair to say, then,

6 that -- or, is it accurate to say -- I'm

7 just trying to get at what you looked

8 at -- is it accurate to say that Appendix

9 C represents the sum total of the studies

10 or reports that you actually identified

11 and reviewed for purposes of preparing

12 your report and there were no other

13 studies or reports that you reviewed and,

14 ultimately, discounted or elected not to

15 include?

16 A. That statement's correct.

17 Q. Dr. Howlett, my questions,

18 again, right now, are limited to the four

19 studies that you reviewed for purposes of

20 this lawsuit.

21 Am I correct in understanding

22 that you believe to have drawn a

23 conclusion about the reliability of those

24 four studies?

25 A. Yes.

1 Howlett, Ph.D.
2 reputation of the marketing and research
3 group, most reasonable marketers would
4 look at this information and say it's a
5 valid and reliable report.

6 Q. And that's based on -- in
7 this case, it's based on the source of
8 the survey?

9 MR. KELSTON: Objection,
10 misstates the testimony.

11 A. It's based on the name of the
12 organization that funded the research,
13 it's based on the organization that
14 actually conducted the research, it's
15 based on the description of the
16 methodology that I provided in my
17 deposition.

18 Q. In your report.

19 A. In my report -- excuse me.

20 Q. Dr. Howlett, in conducting a
21 consumer survey, is it helpful to know
22 what the consumer's pre-existing
23 knowledge is of the topics under
24 consideration in the survey itself?

25 A. In some circumstances, yes.

1 Howlett, Ph.D.

2 record, what this document is?

3 A. It's the summary of a
4 research study commissioned by Consumer
5 Reports, and the goal was to look at food
6 labels.

7 Q. Dr. Howlett, you didn't
8 participate in either the design,
9 administration, or review for validity of
10 this study; did you?

11 A. No.

12 Q. And, other than what is
13 reflected in Exhibit 3 itself, do you
14 have any other information -- other
15 information extraneous to Exhibit 3, that
16 goes to the design, administration, or
17 validity of this study?

18 A. Yes, I have prior knowledge
19 of the excellence of The Consumer Report
20 Company as an unbiased and professional
21 source of information.

22 Q. Anything else, besides those
23 two things, the reputation of the
24 companies involved in the survey and the
25 document itself?

1 Howlett, Ph.D.
2 report, and the portion of your report
3 where you're -- and that's Exhibit 1, for
4 clarity of the record -- and the portion
5 of your report where you're discussing
6 the Consumer Reports study.

7 So, Footnote 3 of your report
8 contains some discussion of the survey
9 population for the Consumer Reports
10 Survey.

11 Do you see that?

12 A. Yes.

13 Q. Among the information that
14 you've called out here is the error
15 rate -- the potential margin of error --
16 excuse me --

17 A. Yes.

18 Q. -- in the Consumer Reports
19 Survey.

20 Do you see that?

21 A. Yes.

22 Q. Did you do anything to
23 independently calculate or verify the
24 margin of error in the Consumer Reports
25 Survey?

1 Howlett, Ph.D.

2 A. Yes, I did, actually.

3 Q. What did you do?

4 A. I -- there's an interesting
5 website, and you can go and plug in
6 numbers that looks at your confidence
7 level and your significance level, and
8 you can see -- you can see (indicating)
9 what those numbers would be. So given
10 the number of -- the only information
11 that you need to do that is the
12 confidence level and the representative
13 sample, and you can get those numbers.
14 So, yes, I did that.

15 Q. Can you explain to me exactly
16 how that calculation is done, that the
17 variables that are input into this tool
18 to produce the error rate?

19 A. There is a formula, and it's
20 a very long formula, which is why this
21 website is terrific and, off the top of
22 my head, I cannot recall the exact
23 mathematical formula.

24 However, what it involves, it
25 is -- involves the number of subjects

1 Howlett, Ph.D.

2 A. This is the Hartman 2012
3 report.

4 Q. And is this among the reports
5 that you based your conclusions on in
6 your --

7 A. Yes.

8 Q. -- in your report?

9 A. Yes.

10 Q. Dr. Howlett, you didn't
11 participate in the design,
12 administration, or validation of the
13 results of this report; correct?

14 A. Correct.

15 Q. And your conclusions about
16 the validity of this report or study are
17 drawn entirely from what's contained in
18 the report itself; correct?

19 A. And my knowledge of this
20 organization.

21 Q. By "this organization", you
22 mean the Hartman Group?

23 A. Yes.

24 Q. Have you ever worked with the
25 Hartman Group in any capacity?

1 Howlett, Ph.D.
2 relied on in reaching her
3 conclusions that she reached in
4 this litigation, was marked for
5 identification, as of this date.)

6 Q. Dr. Howlett, the court
7 reporter has handed you what's been
8 marked as I believe Exhibit 6 to your
9 report.

10 Dr. Howlett, is this the
11 fourth and final third-party study that
12 you relied on in reaching your
13 conclusions that you reached in this
14 litigation?

15 A. Yes.

16 Q. And you didn't participate in
17 the design, administration, or review of
18 the information collected in this study
19 for its validity?

20 A. No.

21 Q. Did you have any access to
22 the raw data that was collected in the
23 course of this study?

24 A. No.

25 Q. What's your familiarity with

1 Howlett, Ph.D.

2 Cogent Research?

3 A. I actually hadn't heard of it
4 prior to this, so I went out and did a
5 little search on the internet and
6 gathered some information.

7 Q. What information did you
8 gather?

9 A. That it's a well-respected
10 marketing research firm.

11 Q. How did you conclude it was
12 well-respected?

13 A. Just looking at -- I don't
14 remember right off, but just looking at
15 they had a list of the clients who had
16 previously used (indicating) this
17 research organization, and I just made
18 the inference.

19 Q. Have you ever worked with
20 Cogent Research yourself?

21 A. No.

22 Q. Other than this research that
23 you did into Cogent, and the document
24 that is Exhibit 6, do you have any other
25 information or evidence upon which you're

1 Howlett, Ph.D.
2 basing your conclusions about the
3 validity or reliability of this survey?

4 A. No.

5 Q. Dr. Howlett, turn, if you
6 would, to page 4 of Exhibit 6.

7 Based on the information
8 that's presented on page 4, what was the
9 total sample size of -- for the survey
10 that Cogent Research conducted?

11 A. 39.

12 Q. And how many people actually
13 participated in the study?

14 A. 33.

15 Q. What do you know about the
16 geographic dispersion of those 33
17 individuals?

18 A. It's my understanding that,
19 because it was an online bulletin board
20 and it was also a national sample, that
21 it was -- it wasn't limited to one area.

22 Q. Do you know if that -- if
23 that 33-person sample size was
24 representative of the United States
25 population?

1 Howlett, Ph.D.

2 your opinion about whether these are
3 valid and reliable surveys that conflict
4 with the result of the Ostberg Survey?

5 MR. SIPOS: Object to the
6 form.

7 A. No.

8 Q. Okay, and why not?

9 A. Because, again, this is --
10 these are the common techniques and
11 procedures that are used in the marketing
12 research industry to address these types
13 of questions.

14 Q. And, when you say these kinds
15 of questions, what do you mean?

16 A. The consumer's conceptual
17 understanding of what "natural" means.

18 Q. Is it your belief that the
19 surveys on which you rely in your
20 declaration comply with standard
21 practices in the marketing industry for
22 the conduct of consumer opinion surveys?

23 A. Yes.

24 Q. And, first, why do you
25 believe that is true?

1 Howlett, Ph.D.

2 A. Given my understanding of how
3 these kinds of surveys are conducted, and
4 as a marketing research professor who's
5 looked at a lot of these surveys, these
6 are the types of procedures that are
7 used.

8 And, also, it's coming from
9 highly-respected sources of information.
10 These organizations are highly-respected,
11 and you expect them to follow a certain
12 set of guidelines for doing this kind of
13 research.

14 Q. Do -- well, let me strike
15 that.

16 Mr. Sipos asked earlier today
17 whether the methodological data that you
18 reviewed in connection with the surveys
19 that you opine on in your report include
20 any information about the amount of time
21 that survey participants had to respond
22 to specific questions.

23 Do you recall that?

24 A. Yes.

25 Q. And you said that you did not

1 Howlett, Ph.D.
2 experimental type of study, and that's
3 why it applied in an experimental type of
4 study as opposed to just a standard
5 opinion research, like was done in these
6 cases.

7 Q. And why did -- and, in fact,
8 I believe Mr. Sipos asked you specifically
9 about whether there was information about
10 the amount of time for which participants
11 were presented with a stimulus.

12 Do you remember him asking
13 that?

14 A. Yes.

15 Q. Okay. And why is that
16 information not pertinent to the Consumer
17 Reports and Hartman surveys?

18 A. Because it wasn't a stimulus-
19 based -- we -- there was no presentation
20 of stimuli, it wasn't -- it was an
21 opinion survey, not an experimental test.

22 Q. You were also asked earlier
23 today whether the methodological data you
24 had included for the Consumer Reports
25 Survey, the amount of time that the

1 Howlett, Ph.D.

2 Q. Are you familiar with the
3 phrase "secondary data"?

4 A. Yes.

5 Q. What is "secondary data"?

6 A. "Secondary data" is actually
7 data that is collected not specifically
8 for your research project. So it's -- it
9 exists, that it's been collected by
10 another agency or organization.

11 Q. And do you, in the course of
12 your academic work, review and rely on
13 secondary data?

14 A. Yes.

15 Q. For a market research expert
16 to conclude that secondary data is valid
17 and reliable, does a marketing expert
18 need to have the underlying raw data
19 of -- from the -- from a survey being
20 reviewed as secondary data?

21 A. No.

22 MR. SIPOS: Object to the
23 form.

24 Q. Why not?

25 A. Because, again, that's

1 Howlett, Ph.D.

2 just -- it's not standard practice in the
3 industry, of when you have a report
4 that's prepared by an organization, like
5 IRI or Nielsen or Hartman, you're putting
6 your trust in the reputation of the
7 company that they're going to be
8 following these standard practices, and
9 you never get raw data.

10 Q. And is it your opinion that
11 it is reasonable to rely on secondary
12 data from reputable organizations, such
13 as you just mentioned, even without
14 having the opportunity to review the
15 underlying raw data?

16 MR. SIPOS: Object to the
17 form.

18 A. Yes.

19 Q. When you are considering a
20 survey that's been done that is secondary
21 data for you, does the purpose for which
22 the survey was conducted come into play
23 in your evaluation of the reliability of
24 the survey?

25 A. Yes.

1 Howlett, Ph.D.

2 Q. And how does the purpose for
3 which it was conducted affect your
4 evaluation of reliability?

5 A. Well, for example, in --
6 there are some surveys that the USDA will
7 put together or the CDC, and they are --
8 I use those a lot to look at, because
9 they are totally objective.

10 The other marketing research
11 firms, again, are just -- they're
12 collected for the industry as a whole,
13 not for a specific firm and so, again,
14 they're very objective, and that's -- you
15 know, that's the key of what I look for
16 and that is that the total objectivity
17 that you can get from the whole industry
18 or from the government or any sources
19 like that.

20 Q. And are there purposes for
21 which surveys are conducted that you
22 would consider to make them inherently
23 less reliable than the kinds of surveys
24 you just described?

25 MR. SIPOS: Object to the

1 Howlett, Ph.D.

2 form of the question.

3 A. Well, given my experience,
4 I'd have to say that surveys conducted
5 for litigation are going to be somewhat
6 less reliable just in general than an
7 unbiased entity.

8 Q. So, when you were evaluating
9 the Consumer Reports and Hartman surveys
10 and the IFIC Survey on which you opined
11 in your declaration in this case, did you
12 take into account the purpose for which
13 they were conducted?

14 A. Yes.

15 Q. And were those surveys
16 conducted for litigation, to your
17 knowledge?

18 A. No, they were not.

19 Q. Can you please take a look at
20 Exhibit 3, which is the Consumer Reports
21 National Research Center survey research
22 report. And, if you would, please turn
23 to page 19. And, toward the bottom of
24 the page, there's a grid that has
25 question 8.

1 Howlett, Ph.D.

2 opine on in your report, are valid and
3 reliable studies on which marketing
4 experts would reasonably rely in forming
5 an opinion on the subject of consumer
6 perception of food labels?

7 MR. SIPOS: Object to the
8 form of the question.

9 A. No.

10 Q. Okay, why not?

11 A. Because, as I've said,
12 these -- the sources of information, this
13 market research information, is highly
14 reliable, if it's done well, and I think
15 it's very valid and reliable, and it
16 addresses the general conception of how
17 people in general view "natural" within
18 the context of food products. And
19 there's no indication that maybe people
20 in a higher or a lower socioeconomic
21 status, for example, would consider those
22 terms to be different. There's no
23 indication that that would be the case.

24 Q. The Ostberg Survey purports
25 to show that only approximately 2 percent

1 Howlett, Ph.D.
2 of consumers make any association between
3 the statement: Made with all natural
4 corn, on Kix packaging, and whether that
5 corn is bioengineered or organic.

6 Does the degree of difference
7 between the result that the Ostberg
8 Survey presents and the results that the
9 Consumer Reports and Hartman surveys
10 present affect your judgment at all about
11 whether there is valid and reliable
12 evidence existing that contradicts the
13 Ostberg Survey?

14 MR. SIPOS: Object to the
15 form of the question.

16 A. I think it's clear. And
17 I -- I've said this before, again, that I
18 think the Ostberg Survey is so far out of
19 the ballpark, and all these other sources
20 of objective independent information are
21 all relatively consistent, and that's
22 what I'm basing my judgment on, on that
23 information.

24 Q. The declaration that you
25 prepared for this case, it's been marked

EXHIBIT C

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Attorneys for
GENERAL MILLS, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHRISTINA BEVANS, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GENERAL MILLS, INC.,

Defendant.

Case No. 2:12-cv-00249 (FSH) (PS)

Case No. 2:12-cv-02886 (FSH) (PS)

**GENERAL MILLS' OBJECTIONS
AND RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS**

ROBIN MARCUS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GENERAL MILLS, INC.,

Defendant.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, General Mills sets forth below its responses and objections to Plaintiff's First Requests for Production of Documents.

PRELIMINARY STATEMENT

General Mills intends to limit the burden associated with electronic discovery by collecting and reviewing the files of a pre-determined set of custodians and central files. It also plans to filter the ESI it collects by applying a set of keywords. General Mills will cooperate with Plaintiff through periodic meet and confer discussions where the parties can discuss the particular custodians, sources and keywords. Like any endeavor to collect, review and produce electronically stored information, however, producing from multiple custodial and non-custodial sources will impose significant burden and expense. To the extent that Plaintiffs believe these Requests require more than the sources General Mills plans to collect, General Mills objects on the grounds that (a) the requests seek to compel General Mills to conduct a search beyond the scope permissible discovery contemplated by the Federal Rules Civil Procedure and (b) compliance with the requests would impose an undue burden and expense on General Mills. Fed. R. Civ. P. 26(b)(2)(C)(iii).

General Mills' responses and objections are made in good faith, based on presently available information and documentation. Plaintiffs should not construe these responses and objections to prejudice General Mills right to conduct further investigation or to limit General

Mills' right to utilize any additional evidence that may be developed. General Mills does not waive any right to modify and/or supplement its responses and objections to any document request, and expressly reserves all such rights.

General Mills intends for these responses to apply to all three cases—*Bevans*, *Marcus*, and *Pfieffer*. It has not included *Pfieffer* in the caption because the Court has not yet agreed to consolidate the case.

GENERAL OBJECTIONS

General Mills makes Specific Objections to each separate Request in its responses below. General Mills also makes the following General Objections and incorporates them by reference to avoid the wasteful exercise of repeating the same objections for each Request.

1. General Mills does not in any way adopt Plaintiff's purported definitions of words and phrases and reserves the right to object to them to the extent they are inconsistent with either (i) the definitions set forth by General Mills where applicable or (ii) the Federal Rules of Civil Procedure, or (iii) the ordinary and customary meaning of such words and phrases. Likewise, General Mills objects to Plaintiff's purported definitions to the extent that they purport to impose upon General Mills any obligations broader than, or inconsistent with, the Federal Rules of Civil Procedure or common law.

2. General Mills objects to the extent that any Request seeks documents relating to products other than Kix (original), Berry Berry Kix, and Honey Kix, on the grounds that all other General Mills products are irrelevant and outside the scope of this litigation.

3. General Mills does not in any way adopt Plaintiff's Instructions, and specifically objects to Instructions 1 through 14 on the grounds that the obligations imposed are antiquated, impractical, burdensome, and exceed the obligations of the Federal Rules of Civil Procedure 26 and 34. General Mills also objects to Instruction 15 on the same grounds; however, subject to and without waiving the objection, General Mills agrees to follow the general prescriptions set forth in Appendix "A" to the extent they are technically feasible.

4. General Mills objects to the Requests to the extent that they seek documents outside the alleged class period, which is from May 3, 2006 to the present.

5. General Mills objects to the Requests to the extent that they seek information protected by the attorney-client privilege or work product doctrine. Nothing contained in these responses is intended as a waiver of any attorney-client privilege, work product protection, or any other applicable privilege or doctrine.

6. General Mills objects to the Requests to the extent that the burden of responding outweighs the benefit, or to the extent that they seek the production of documents that are not reasonably accessible as defined by Federal Rule of Civil Procedure 26(b)(2)(B).

7. General Mills objects to the Requests to the extent they purport to require General Mills to produce public documents that are equally available to Plaintiff.

8. General Mills objects to the Requests to the extent they seek the production of confidential or proprietary documents except in accordance with the Confidentiality Order that the Court has approved in this action.

9. General Mills does not concede that any of the documents they will produce are or will be admissible evidence at trial or any evidentiary hearing. Further, General Mills does not waive any objection, whether or not asserted herein, to the use of any such answer or documents at trial.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST FOR PRODUCTION NO. 1:

Copies of all package labeling used for the Products from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Subject to and without waiving the General Objections stated above, General Mills has already produced package flats for Kix (original) and agrees to produce package flats for Berry Berry Kix and Honey Kix.

REQUEST FOR PRODUCTION NO. 2:

Documents sufficient to identify the time period during which, and geographic area where, each package label produced in response to Request for Production No. 1 was or is used.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

In addition to the General Objections stated above, General Mills objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 3:

Copies of all versions and drafts of package labeling considered by You for use in the sale of the Products, whether or not ultimately utilized in the Marketing Material for the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

In addition to the General Objections stated above, General Mills objects to the phrase “for use in the sale of the Products” on the grounds that it is overbroad, vague, and ambiguous. General Mills also objects to this Request to the extent that it seeks “all versions and drafts” on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce responsive, non-privileged documents from central files that it maintains for Kix labels. General Mills will also produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 4:

All Documents concerning Defendant's decision(s) to place the statement “made with All Natural Corn” or the phrase “All Natural” on the packaging of the Products, any Marketing Material, and/or Your Website

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of the designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 5:

All Documents concerning correspondence among Your employees or between You and any third party regarding the terms “natural,” “All Natural,” “made with All Natural Corn,” or any variations thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

In addition to the General Objections stated above, General Mills objects to the phrases “all Documents concerning correspondence,” “any third party,” and “any variations” on the grounds that they are overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of the designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 6:

All Documents concerning Defendant's reason(s) or the basis for placing the statement “made with All Natural Corn” or the phrase “All Natural” on the packaging of the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of the designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 7:

All documents concerning any anticipated or actual benefits derived or to be derived from the placement of the statement “made with All Natural Corn” or the phrase “All Natural” on the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 8:

All Documents concerning consumer understanding of or response to the statement “made with All Natural Corn” or the phrase “All Natural,” including, but not limited to, consumer surveys, whether prepared by You, on your behalf or by third parties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 9:

All Documents concerning any consumer complaints or confusion regarding the statement “made with All Natural Com” and/or the phrase “All Natural.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will search relevant discrete, non-custodian sources and produce any non-privileged customer complaints responsive to this Request. Additionally, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 10:

All Documents concerning any marketing study or analysis either: (a) with respect to use of the term “natural,” or (b) with respect to genetically modified foods or ingredients.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 11:

All Documents concerning Defendant's decision(s) to place the statement “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day” on the packaging of the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 12:

All Documents concerning the statement “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day” or any variation of this statement that You considered using in the Marketing Material for the Products or that was proposed to You to be used in the Marketing Material for the Products by any third party.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

In addition to the General Objections stated above, General Mills objects to the phrases “all Documents concerning,” “any variation,” and “any third party” on the grounds that they are overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 13:

All Documents concerning Defendant's reason(s) or the basis for placing the phrase “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day” on the packaging of the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 14:

All Documents concerning any anticipated or actual benefits derived or to be derived from the placement of the statement “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day” on the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 15:

All Documents concerning consumer understanding of or response to the phrase “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day,” including, but not limited to, consumer surveys, whether prepared by You, on your behalf or by third parties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 16:

All Documents concerning any consumer complaints or confusion regarding the Statement “Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 17:

All Documents concerning the Defendant's decision to use the image of cereal made in the shape of corn on the packaging of the Products, any Marketing Material, and/or Your Website and/or the reasons for that decision.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 18:

All Documents concerning the presence or absence of GMOs in the Products, including, but not limited to, all Documents concerning any testing revealing the presence or absence of GMOs in the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 19:

All Documents concerning any communication with any Person from whom you purchased corn for use in the Products from January 1, 2006, to the present, which concern or in any way refer to GMOs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” and “any communication” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to identify all suppliers of corn used to make the Products at any time from January 1, 2006, until the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

In addition to the General Objections stated above, General Mills objects to the phrase “Documents sufficient to identify” on the grounds that it is overbroad, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 21:

All Documents concerning consumer understanding or opinion of GMOs or the use of GMOs in food products, including, but not limited to, consumer surveys, whether prepared by You, on your behalf, or by third parties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 22:

All Documents concerning any communication to and from any health organizations or governmental agencies concerning the presence of GMOs in the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

In addition to the General Objections stated above, General Mills objects to this Request to the extent it seeks “all Documents concerning” on the grounds it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to identify the monthly unit sales volume, gross sales amount, net sales amount, revenues, profits, and losses relating to the Products in the United States from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

In addition to the General Objections stated above, General Mills objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to identify the monthly unit sales volume, gross sales amount, net sales amount, revenues, profits, and losses relating to the Products in New Jersey from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24: In addition to the General Objections stated above, General Mills objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 25:

Documents sufficient to identify the monthly unit sales volume, gross sales amount, net sales amount, revenues, profits, and losses relating to the Products in California from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25: In addition to the General Objections stated above, General Mills objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving

the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 26:

All Documents concerning the cost, pricing, and sales of the Products in the United States during the period January 1, 2006, to the present, including, but not limited to, any relative, comparative, or strategic analysis, assessment, evaluation, or other study or inquiry regarding the cost, pricing, or sales of the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

In addition to the General Objections stated above, General Mills objects to the phrase “all Documents concerning” on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous. General Mills also objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 27:

All Documents concerning the cost, pricing, and sales of the Products in New Jersey during the period January 1, 2006, to the present, including, but not limited to, any relative, comparative, or strategic analysis, assessment, evaluation, or other study or inquiry regarding the cost, pricing, or sales of the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

In addition to the General Objections stated above, General Mills objects to the phrase “all Documents concerning” on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous. General Mills also objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist. Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 28:

All Documents concerning the cost, pricing, and sales of the Products in California during the period January 1, 2006, to the present including, but not limited to, any relative, comparative, or strategic analysis, assessment, evaluation, or other study or inquiry regarding the cost, pricing, or sales of the Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

In addition to the General Objections stated above, General Mills objects to the phrases “all Documents concerning,” and “any relative, comparative, or strategic analysis, assessment, evaluation, or other study or inquiry” on the grounds that they are overbroad, unduly burdensome vague, and ambiguous. In addition to the General Objections stated above, General Mills objects to the extent that this Request is intended to require General Mills to create documents, or gather data, that do not exist.

Subject to and without waiving the General and Specific Objections stated above, General Mills will attempt to locate non-privileged documents sufficient to identify the information requested, if any exist.

REQUEST FOR PRODUCTION NO. 29:

Documents identifying Customers in the United States who purchased the Products from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Subject to and without waiving the General Objections stated above, General Mills states on information and belief that it does not, in the ordinary course of business, maintain documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 30:

Documents identifying Customers in the state of New Jersey who purchased the Products from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Subject to and without waiving the General and Objections stated above, General Mills states on information and belief that it does not, in the ordinary course of business, maintain documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 31:

Documents identifying Customers in the state of California who purchased the Products from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Subject to and without waiving the General Objections stated above, General Mills states on information and belief that it does not, in the ordinary course of business, maintain documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 32:

Organizational charts identifying any of Defendant's employees involved in the marketing of the Products from January 1, 2006, to the present, including, but not limited to, any employees involved in the decision-making processes that resulted in Defendant's decisions to place the statement "made with All Natural Corn" or the phrase "All Natural" or the statement "Made with simple, good-for-you ingredients like all-natural whole grain corn, KIX® cereal is a tasty way to kick off a great day," on the packaging of the Products, any Marketing Material, and/or Your Website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

In addition to the General Objections stated above, General Mills objects to the extent that Plaintiffs seek organization charts unrelated to personnel involved in the marketing and branding of Kix cereals on the grounds that it is overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce unprivileged exemplars of organizational charts responsive to this Request.

REQUEST FOR PRODUCTION NO. 33:

Documents identifying any Person or entity other than Your employees - including, but not limited to, advertising agencies and all employees of advertising agencies - involved in the marketing of the Products from January 1, 2006, to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

In addition to the General Objections stated above, General Mills objects to the phrases “Documents identifying” and “involved in the marketing” on the grounds that they are overbroad, unduly burdensome, vague, and ambiguous.

Subject to and without waiving the General and Specific Objections stated above, General Mills will produce any non-privileged documents responsive to this Request from the files of designated document custodians, after a reasonably diligent search of their files by applying an agreed-upon keyword search filter and reviewing the results.

REQUEST FOR PRODUCTION NO. 34:

All Documents concerning any policy, procedure, or practice of document preservation by General Mills.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

In addition to the General Objections stated above, General Mills objects to the phrases “all Documents concerning” and “any policy, procedure, or practice” on the grounds that they are overbroad, vague, and ambiguous. General Mills further objects to the Request on the ground that it seeks documents and information protected by the attorney-client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 35:

All Documents identified or referred to in Plaintiffs First Set of interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Subject to and without waiving the General Objections stated above, General Mills will produce any non-privileged documents responsive to this Request.

By: /s/ Stephen M. Orlofsky

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Attorneys for Defendant

PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 400 South Hope Street, Los Angeles, California 90071-2899. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence collected from me would be processed on the same day, with postage thereon fully prepaid and placed for deposit that day with the United States Postal Service. On July 26, 2012, I served the following:

**GENERAL MILLS' OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid, and placing the envelope for collection and mailing today with the United States Postal Service in accordance with the firm's ordinary business practices, addressed as follows:

Michael R. Reese
Reese Richman LLP
875 Avenue of the Americas, 18th Flr.
New York, NY 10001

Richard H. Weiss
Milberg LLP
One Pennsylvania Plaza
New York, NY 10119-0165

Bruce D. Greenberg
Lite DePalma Greenberg LLC
Two Gateway Center, Suite 1201
Neward, NJ 07102

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 26, 2012, at Los Angeles, California.


Mila Sugang